

REMARKS

In the Office Action, Claims 16-19, 25-39, and 41-46 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,433,960 to Meyers (*Meyers*). For at least the reasons discussed below, Applicants believe that the obviousness rejections are improper and thus should be withdrawn.

It is a well established axiom of patent law that the Patent Office must consider every element of the claim when evaluating the scope of a claim. *In re Ochiai*, 71 F.3d 1565, 1572, 37 USPQ2d 1127, 1133 (Fed. Cir. 1995), see MPEP §2144.08. Applicants have made clear in each of the independent claims that the claims include a stand alone edible film. Therefore, the Patent Office must consider the stand alone edible film element of the claims.

Under a proper reading of the claims, Applicants respectfully submit that *Meyers* fails to teach or suggest a stand alone edible film composition as recited in the present claims. Rather, *Meyers* discloses a chewing gum coating that requires a chewing gum piece as a support substrate. *Meyers*, column 5, lines 35-38. In fact, all eleven examples disclosed in *Meyers* require a chewing gum stick to support the coating. Indeed, the primary property of the ingredients of the *Meyers* coating is that they “exhibit adhesive characteristics” to better adhere to a substrate such as a chewing gum piece. *Meyers*, column 6, lines 35-38, and column 7, lines 22-27. Furthermore, the chewing gum coating in *Meyers* is specifically tailored to be applied onto a chewing gum piece. *Meyers*, column 6, line 56 through column 7, line 7. Therefore, *Meyers* fails to teach or suggest a stand alone edible film composition as recited in the present claims.

The Patent Office states that Applicants use comprising language, and, therefore, this means that the prior art, even if it is not a stand alone film, could include structural support ingredients. First, Applicants submit that this is not a proper interpretation of the instant claims, nor is it a proper application of the law. Regardless, Applicants’ specification defines a stand alone film as one that does not need structural support ingredients. Thus, to meet the limitations of a stand alone film, the art must provide or suggest a film that does not need structural support ingredients. The cited art woefully fails to even suggest such an element.

Thus, because *Meyers* fails to teach or suggest a stand alone film composition and, indeed, teaches away from this composition, the claims are not properly rejected under 35 U.S.C. §103.

Claim 40 stands rejected as being unpatentable over *Meyers* in view of U.S. Patent No. 5,948,430 to Zerbe et al. (*Zerbe*). Applicants respectfully submit that *Zerbe* fails to cure the deficiencies of *Meyers* mentioned above, and, therefore, the rejection is improper and should be withdrawn.

For the foregoing reasons, Applicants respectfully submit that the present application is in condition for allowance and earnestly solicit reconsideration of same.

Respectfully submitted,

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Dated: March 16, 2005